

**OPINION
69-232**

June 2, 1969 (OPINION)

Mr. Charles Bosch

Registrar

Motor Vehicle Department

RE: Motor Vehicles - Registration - Transfer of Title

This is in response to your letter in which you set forth a reoccurring problem in your Department. Frequently you are asked to transfer title of a vehicle which has very little commercial value. The vehicle in question, in many instances, was in need of repair and was taken to a service station or garage for such repairs. The repairs approximated or exceeded the value of the vehicle. Upon being informed of this, the owner lost interest in the vehicle and refused to make any payments on the cost of repairs. The repairman finds it economically unfeasible to go through the legal process to acquire title to the vehicle. It was suggested that you might resort to the provisions of Section 39-05-19 of the North Dakota Century Code to accomplish a transfer by issuing a new title. Section 39-05-19 provides as follows:

OBTAINING CERTIFICATE OF TITLE FOR VEHICLE WHEN OWNERSHIP OBTAINED BY OTHER THAN VOLUNTARY MEANS. Whenever the ownership of any motor vehicle shall pass otherwise than by voluntary transfer, the new legal owner may obtain a certificate of title therefor from the department upon application therefor and payment of a fee of one dollar, accompanied with such instruments or documents of authority, or certified copies thereof, as may be required by law to evidence or effect a transfer of title in or to chattels in such case. The department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto."

The language, "shall pass otherwise than by voluntary transfer", means transfers as a result of judicial process, including transfers resulting from probate proceedings - full scale or summary - and would also include transfers of vehicles held in joint ownership upon the death of one of the joint owners. The section in question authorizes the Registrar to furnish a certificate of title upon the payment of the fee if same is accompanied with such instruments or documents of authority or certified copies thereof as may be required by law to evidence or effect a transfer of title in or to chattels in such case. This language, and for that matter Section 39-05-19 of the North Dakota Century Code, authorizes the Registrar to issue a new certificate of title only when an instrument or document is presented to him showing that the legal title to the vehicle has been transferred. It does not contemplate or authorize the Motor Vehicle Registrar to act in a quasi-judicial capacity, nor does it require or authorize him to make a determination as to rightful ownership of a vehicle. It permits the transfer whenever a document or instrument

is presented to the Registrar evidencing that a change of ownership has occurred. The document must be one indicating that a legal transfer has been accomplished. It is not up to the Registrar to determine from the evidence whether a transfer should be accomplished.

Any transfer accomplished by the Registrar or any new certificate of title issued which is not based upon an instrument or document evidencing a legal transfer can give rise to personal liability in the event the rightful owner is injured thereby.

It is, therefore, our opinion that the Registrar is not required to issue new certificates of title under the facts presented here, and if he does so, he is doing it on his own peril.

HELGI JOHANNESON

Attorney General